

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'C': NEW DELHI)**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 4017/Del/2015  
(Assessment Year: 2005-06)**

Deputy Commissioner of Income Tax, Central Circle, Meerut.	Vs.	Dr. Gopal Das Agarwal, Bharatpur Gate, Mathura.
<b>PAN No:</b> AAVPA3099C		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Revenue By** : Ms. Sugandha Sharma, Sr. DR

**Assessee By** : Ms. Kanika Bansal, Adv.

**Date of Hearing** : 12/09/2019

**ITA No:- 4019/Del/2015  
(Assessment Year: 2011-12)**

Deputy Commissioner of Income Tax, Central Circle, Meerut.	Vs.	Dr. Gopal Das Agarwal, Bharatpur Gate, Mathura.
<b>PAN No:</b> AAVPA3099C		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Revenue By** : Ms. Sugandha Sharma, Sr. DR

**Assessee By** : Ms. Kanika Bansal, Adv.

**Date of Hearing** : 12/09/2019

## **CONSOLIDATED ORDER**

### **Per Anadee Nath Misshra, AM**

**(A)** The above captioned appeals by Revenue are taken up together for the sake of convenience and brevity and these appeals are hereby disposed off through this Consolidated Order; because, in these appeals the tax effect is less than the monetary limit of Rs. 50,00,000/- fixed by the Central Board of Direct Taxes ("CBDT", for short) in its Circular No. 17/2019 dated 08.08.2019. Grounds taken in these appeals of Revenue are as under:

#### **ITA No.- 4017/Del/2015**

- "1. That Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.1,08,011/- ma A.O. u/s 41(1) without appreciation of the fact that primary onus on proving any expense in its/his book of account lies with assessee which he failed to discharge.*
- 2. That Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 34,23,600/- on account of unexplained investment u/s 69 with total disregard of the provisions of section 292C I.T.Act.*
- 3. That Ld. CIT(A) has erred in law and on facts in deleting the addition on account of disallowance of adhoc expenses of Rs. 3,69,806/- and unexplained investment of Rs. 34,23,600/- u/s 6 that A.O. has not made proper enquiry without making enquiry himself in terms of section 250(4) of the I.T. Act, 1961 ignoring the judgment of Hon'ble High Court of Delhi in ITA No. 525 c the case of CIT-II New Delhi vs M/s Jansampark Advertising and Marketing (P) Ltd. & Anr.*
- 4. That Ld. CIT(A) has erred in law and on facts in deleting the addition in fixed assets to the Rs. 7,69,694/- without appreciation of the fact that assessee failed to produce any bill/vi supporting evidence in support of his claim.*
- 5. That the order of the Ld. CIT(A) being erroneous in law and on facts which needs to be vacated and the order of the A.O. be restored.*

6. *That the appellant craves leave to add or amend any one or more of the ground of the stated above as and when need for doing so may arise."*

**ITA No.- 4019/Del/2015**

1. *That Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.6,10,260/- made by the A.O. u/s 41(1) without appreciation of the fact that primary onus on proving any expenses debited in its/his book of account lies with assessee which he failed to discharge.*
2. *That Ld. CIT(A) has erred in law and on fact in deleting the addition on account of unexplained investment in jewellery worth Rs. 46,78,318/- u/s 69 with total disregard of the provisions c section 292C(1) of the I.T.Act.*
3. *That Ld. CIT(A) has erred in law and on facts in deleting the addition on account of disallowance of adhoc expenses of Rs. 7,49,309/- and unexplained investment in jewellery worth I 46,78,318/- u/s 69 holding that A.O. has not made proper enquiry without making enquiry him; in terms of section 250(4) of the I.T. Act, 1961 ignoring the judgment of Hon'ble High Court Delhi in ITA No. 525 of 2014 in the case of CIT-II New Delhi vs M/s Jansampark Advertising Marketing (P) Ltd. & Anr.*
4. *That Ld. CIT(A) has erred in law and on fact in deleting the addition u/s 69 by substituting his satisfaction in place of AO's satisfaction as required by provision of section u/s 69 of the I.T. Act.*
5. *That the order of the Ld. CIT(A) being erroneous in law and on facts which needs to be vacated and the order of the A.O. be restored.*
6. *That the appellant craves leave to add or amend any one or more of the ground of the app stated above as and when need for doing so may arise."*

**(B)** At the outset, The learned Counsel for Assessee submitted that the tax effect in each of these appeals is below Rs. 50,00,000/- and further, that these appeals were not maintainable in view of the aforesaid CBDT Circulars dated 08.08.2019; and the clarification dated 20.08.2019 issued by CBDT. She also submitted written submissions to that effect, as under:

Written submission (ITA No. -4017/Del/2015)

*"That the above noted respondent has the honor to submit as given below:*

1. *That the DCIT Central circle, Meerut had filed abovementioned appeal against the respondent on dated 17.06.2015 at Income Tax Appellate Tribunal, New Delhi.*
2. *That the Asstt. Commissioner of Income Tax, Central Circle , Meerut had raised demand of Rs. 26,81,093-00 in assessment order . Appeal for the year 2005-2006 filed by the respondent were allowed by learned CIT Appeals , Meerut in favor of the respondent and all the additions made in the assessment order were deleted . Against the order of the CIT appeals the revenue has preferred this appeal.*
3. *That the tax effect involved in the grounds raised by the Revenue in the appeal is below Rs. 50 lakhs .*
4. *That in view of recent CBDT Circular No. 17/2019 dated 8<sup>th</sup> August, 2019, raising the monetary limit for filing of the appeal by the Revenue before the Tribunal to Rs. 50 lakhs and the subsequent clarification of the CBDT vide Notification NO. F.No. 279/Misc/M-93/2018 ITJ dated 20<sup>th</sup> August, 2019 stating the said Circular is applicable even to pending appeals therefore the appeal filed by the Revenue is not maintainable.*

**Prayer**

*"In view of the facts and submissions made herein above, it is most respectfully prayed that this Hon'ble Tribunal be graciously pleased to dismiss the appeal of the revenue."*

Written submission (ITA no.- 4019/Del/2015)

*"That the above noted respondent has the honor to submit as given below:*

1. *That the DCIT Central circle, Meerut had filed abovementioned appeal against the respondent on dated 17.06.2015 at Income Tax Appellate Tribunal, New Delhi.*
2. *That the Asstt. Commissioner of Income Tax, Central Circle, Meerut had raised demand of Rs. 27,26,292-00 in assessment order .Appeal for the year 2011-2012 filed by the respondent were allowed by learned CIT Appeals , Meerut in favor of the respondent and all the additions made in the assessment order were deleted . Against the order of the CIT appeals the revenue has preferred this appeal .*
3. *That the tax effect involved in the grounds raised by the Revenue in the appeal is below Rs. 50 lakhs .*
4. *That in view of recent CBDT Circular No. 17/2019 dated 8<sup>th</sup> August, 2019, raising the monetary limit for filing of the appeal by the Revenue before the Tribunal to Rs. 50 lakhs and the subsequent clarification of the CBDT vide*

*Notification NO. F.No. 279/Misc/M-93/2018 ITJ dated 20<sup>th</sup> August, 2019 stating the said Circular is applicable even to pending appeals therefore the appeal filed by the Revenue is not maintainable.*

***Prayer***

*"In view of the facts and submissions made herein above, it is most respectfully prayed that this Hon'ble Tribunal be graciously pleased to dismiss the appeal of the revenue."*

**(B.1)** The learned Counsel for the Assessee, in view of the foregoing did not make any submissions on merits of the disputed issues, and also did not bring any other aspects of the case to our attention.

**(C)** Learned Senior Departmental Representative ("Ld. Sr. DR"), for short] agreed, at the time of hearing, that tax effect in each of these appeals is below Rs. 50,00,000/-. Thus, both sides, [the learned Sr. DR for Revenue and the learned Counsel for Assessee] were in agreement, at the time of hearing before us, that the tax effect in each of these appeals is below Rs. 50,00,000/-. Vide recent CBDT Circular No. 17/2019 dated 08.08.2019 read with earlier CBDT Circular No. 3 of 2018, dated 11.07.2018, minimum threshold limit of tax effect for filing of appeals by Revenue in Income Tax Appellate Tribunal ("ITAT", for short) has been enhanced to Rs. 50,00,000/-. In a subsequent clarification issued by CBDT vide F.No. 279/Misc/M-93/2018-ITJ, dated 20/08/2019, it has been clarified by CBDT that the aforesaid revised monetary limit is also applicable to all pending appeals in ITAT. Having regard to the aforesaid, the Ld. Sr. DR for Revenue did not press the appeals. Therefore, these appeals are dismissed being not pressed, and also being not maintainable having regard to aforesaid CBDT

Circular No. 17/2019 dated 08.08.2019 read with aforesaid CBDT Circular No. 3 of 2018 in the light of aforesaid clarification dated 20/08/2019.

**(D) Before leaving, we clarify that Revenue will be at liberty to approach Income Tax Appellate Tribunal U/s 254(2) of Income Tax Act, 1961; seeking recall of this order and, for restoration of the appeal(s) if it is found that any appeal(s) of Revenue are/ is not covered by aforesaid CBDT Circulars dated 08.08.2019 and 11.07.2018.** We further clarify that we have not expressed any opinion on the merits of the disputed issues or on any other aspects of the case.

**(E)** In the result, both the appeals by Revenue are dismissed being not pressed by Revenue, also being not maintainable. Our decision was orally pronounced in the Open Court after conclusion of hearing on the date of hearing. Now, this written order is pronounced in Open Court on 13/9/2019.

Sd/-

**(AMIT SHUKLA)  
JUDICIAL MEMBER**

Dated: 13.09.2019

Pooja/-

Sd/-

**(ANADEE NATH MISSHRA)  
ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	